Association for Neighborhood & Housing Development

October 15, 2019

Updated Comment letter on Docket No. CFPB-2019-0021 or RIN 3170-AA76

Notice of Proposed Rulemaking on HMDA data

To Whom it May Concern:

I am writing on behalf of the Association for Neighborhood and Housing Development (ANHD) to oppose the proposal of the Consumer Financial Protection Bureau (CFPB) to exempt thousands of lending institutions from reporting mortgage data pursuant to the Home Mortgage Disclosure Act (HMDA). In order to ensure that lenders are meeting housing and credit needs in a non-discriminatory manner per the statutory purposes of HMDA, the reporting thresholds for determining which institutions submit publicly reported data must not be changed.

ANHD has worked on community development issues in New York City for over 45 years. We are an umbrella organization, representing over 80 community groups, and we use research, advocacy, and grassroots organizing to support our members in their work to build equity and justice in their neighborhoods and city-wide. ANHD values justice, equity and opportunity. We believe in the importance of movement-building that centers marginalized communities in our work.

ANHD's Responsible Banking work centers around the understanding that banks are key institutions with an obligation under the Community Reinvestment Act (CRA) to lend and provide financial services equitably, and to reinvest in the areas where they do business. Too often, banks do not act as responsibly as they should, however, and they underserve or even harm low- and moderate-income New Yorkers, people of color, immigrants, and other marginalized populations. Recognizing the need to prevent this inequality, and that the CRA only works if the community gets involved, we provide original research, including our annual "State of Bank Reinvestment in NYC" report, and regularly submit comments on CRA exams, as well as advocate for banks to have forward-looking CRA plans at the time of mergers. HMDA is a key piece of this work, enabling us to identify these disparities.

Through our work in the community development field, ANHD has come to view HMDA as a critical tool for all stakeholders to understand how banks and non-bank lenders are meeting the needs of local communities in their residential lending, both in 1-4 family homes and multifamily buildings. As presented below, we have three core arguments against the proposed changes:

- This rulemaking is not being conducted consistent with the intent and purpose of the Administrative Procedure Act (APA). The comment period is too short and is taking place just 45 days after the full 2018 dataset was released.
- HMDA data has proven essential for evaluating lending patterns and promoting more equitable banking practices; if anything, more data is needed, not less.
- If HMDA reporting is scaled back, federal and state agencies, community organizations and lawyers, AND lenders will have to spend more time collecting and reporting data to help them carry out their missions to evaluate lending patterns and hold lenders accountable to the communities they serve. This includes the CFPB's mission to make consumer financial markets work for consumers, responsible providers, and the economy as a whole.

- Raising thresholds would imperil HMDA's statutory purpose of accurately assessing whether housing and credit needs are being met.

At the outset, we maintain that this rulemaking is not being conducted consistent with the intent and purpose of the Administrative Procedure Act (APA). The APA requires that agencies provide meaningful opportunities for public comments on proposed regulations so that the agencies can receive fully informed comments that help agencies make final decisions on their regulatory proposals. **The CFPB is proposing changes to HMDA just 45 days after the first year of new HMDA data has been released.** This data, mandated by the Dodd Frank Wall Street Reform and Consumer Protection Act, would enable the public to more precisely comment on the data lost by the proposed exemption of hundreds or thousands of lenders.

The public visibility of HMDA data motivates banks to increase their lending to people of color, low- and moderate-income borrowers, and women. Public agencies at all levels use HMDA data per its statutory purposes of anti-discrimination enforcement and to determine where public sector investment can further increase private sector lending. Because it is a public database, private citizens can also use this data to reveal lending trends. **These are just a few examples of how HMDA has been used to identify trends and disparities:**

- A 2017 Reveal Study uncovered racial discrimination in lending in major cities in the US, highlighted the number of CRA mortgages going to upper income borrowers in low- and moderate-income (LMI) neighborhoods, and ultimately prompted a major banking institution to open new branches in LMI neighborhoods[1]. Using the same methodology, New Economy Project found similar trends in NYC[2].
- A 2018 ANHD white paper used HMDA data to demonstrate the lack of loans to black and Hispanic borrowers in New York City[3]. Preliminary analysis of the new HMDA data reveals similar disparities, and additional details of how banks are not adequately meeting the needs of Mexican borrowers within the Hispanic category, as well as Filipino, Korean and "other Asian" borrowers within the Asian category. All received loans well below their percentage of the population.
- The NY Attorney General settled with Evans Bank for incidents of redlining[4]. And the use of HMDA data is explicit in the complaint, where they uncovered that less than 1% of mortgage applications came from people of color and that their record was far behind that of other banks in the area regarding mortgage applications and originations[5].

ANHD uses HMDA data on a regular basis. We use it in conversations with banks and regulators to discuss ways banks can better meet the needs of lower-income people and people of color. We use it to evaluate the lending market overall to see who is and isn't getting access to mortgages. And, in our annual State of Bank Reinvestment in NYC Report, we analyze a set of lenders collectively and compare

[1] https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/
[2] https://www.neweconomynyc.org/2018/02/8137/
[3] https://anhd.org/report/black-and-latino-borrowers-locked-out-homeownership-new-york-city-new-data-and-analysis-shows
[4] https://ag.ny.gov/press-release/ag-schneiderman-secures-agreement-evans-bank-ending-discriminatory-mortgage-redlining
[5] http://www.ag.ny.gov/pdfs/Evans%20Bank%20Complaint%20as%20filed.pdf

them to one another in order to raise the bar for all banks in NYC[6]. Prior to 2018, we used HMDA for 1-4 family loans and asked banks for multifamily loans, including CEMAs. Now we can get their multifamily lending data from HMDA, which is critical to better understanding this segment of the mortgage market that is so critical to NYC. CRA Regulators have struggled with this challenge as well, often having to caveat a bank's percentage of the lending market in light of the unreported CEMA loans. One example appears in Signature Bank's 2019 CRA exam "Signature ranked eighteenth out of this group of [HMDA] lenders, with a market share of 1.2 percent. The ten most prominent multifamily home mortgage lenders accounted for 60.4 percent of total market share. However, examiners noted that many lenders, Signature included, extend a large volume of multifamily loans on a MECA basis, which are not HMDA-reportable and are not accounted for in the available market share reports from the aggregate data. As a result, banks such as Signature actually originate a much larger volume of multifamily mortgage loans than is reported in the aggregate data"[7]

This data is key as over 2.1 million New Yorkers (63%) are renters and most of those renters live in multifamily buildings; nearly one million live in rent-regulated housing. Rent-stabilized housing is one of the most important sources of private, more affordable housing in the city. While HMDA doesn't identify rent-stabilized buildings, we need to be able to analyze lending patterns overall, and particularly in neighborhoods with that stock of housing.

Currently, the threshold for reporting HMDA data is 25 closed-end loans; thus, if a lending institution makes fewer than 25 mortgage loans, it is not required to report to HMDA. In 2015, the CFPB decided against a higher threshold exempting more lenders: "The Bureau concluded that, if it were to set the closed-end coverage threshold higher than 25, the resulting loss of data at the local level would substantially impede the public's and public officials' ability to understand access to credit in their communities." ***Inexplicably, however, the CFPB is now reversing itself*** and is proposing to raise the threshold to 50 or 100 loans. They are inviting comments on even higher thresholds of 250 or 500 loans, which would exempt 67% and 81% of depository institutions, respectively, from reporting HMDA data.

In New York City, using 2018 HMDA data, we stand to lose critical data on lenders that impact thousands of families with their lending.

- **Under a 50-loan threshold**, we would lose 4% of all lenders and 8% of multifamily lenders, including 10% of multifamily lenders with buildings over 50 units.
- **Under a 100-loan threshold**, we would lose nearly 9% of all lenders and 14% of multifamily lenders, including 17% of multifamily lenders with buildings over 50 units.
- **Under a 250-loan threshold**, we would lose 15% of all lenders and 24% of multifamily lenders, including over a quarter (26%) of multifamily lenders with buildings over 50 units.

This doesn't include the lenders we lost that made under 25 loans per the Dodd Frank threshold and the multifamily lenders that did not originate any 1-4 family loans and have never reported to HMDA for that reason. **The CFPB should remove the initial requirement for depositories to originate one 1-4 family home purchase or refinance loan before any other thresholds are evaluated**. And, as outlined below, the two-year lookback doesn't account for high-volume lenders who had to exclude loans from HMDA because they were made via NY CEMA transactions that were not previously HMDA reportable.

[6] https://anhd.org/project/state-bank-reinvestment-nyc-annual-report
[7] https://www5.fdic.gov/CRAPES/2019/57053_190401.PDF

The CFPB states that it is seeking to balance the purposes of HMDA against the burden and cost of reporting the data. However, the CFPB cost estimates for HMDA reporting are just $2 million for all newly exempt lenders if the threshold is raised to 50 loans, or just about $2,000 per lender. These lenders have been reporting to HMDA for decades. **The modest cost savings pales in comparison with the loss in the ability to monitor lender compliance with fair lending laws.** If the threshold is raised to 50 or 100 loans, the public will no longer be able to identify smaller volume lenders that are making few loans or have high denial rates to underserved populations.

Moreover, **federal agency fair lending and CRA exams will become more burdensome for federal agencies and the HMDA exempt lenders since the agencies will now have to ask for internal data from the lenders instead of being able to use the HMDA data**. CRA regulators evaluate banks' records of lending to LMI people and in LMI communities and will now have to request that data from banks that don't report to HMDA. Whereas, the new dataset could result in cost savings for New York State banks and lead to more consistency across banks. Prior to 2018, banks had the choice to include CEMA loans in their CRA exams and, if they chose to do so, had to report them separately to CRA examiners[8]. Some banks included them, and others did not.

In addition, community organizations and lawyers will have a more difficult time taking lower volume lenders such as Emigrant Savings Bank to court over violations of anti-discrimination and consumer protection laws (a federal jury verdict found that Emigrant violated the Fair Housing Act, Equal Credit Opportunity Act, and New York City Human Rights Law)[9]. Without the data for lenders that fall below the thresholds, it will be more difficult to document a pattern of targeting communities of color with high cost and abusive loans.

NY Consolidation Extension Modification Agreement (CEMA) loans pose additional challenges when evaluating thresholds. NY CEMA loans are now HMDA reportable, which means that banks that routinely use this mortgage instrument are no longer forced to underreport their lending by excluding them. This was particularly pronounced in multifamily lending where they are used most often, but not exclusively. Using a two-year look-back system means that some lenders' large volume of lending may not be reflected in the HMDA data in prior years. For example,

- Signature Bank reported 64 loans to HMDA in 2017 and 575 in 2018 (538 multifamily), but their volume of lending reported to ANHD and to CRA regulators each year more closely reflected the higher volumes.
- Dime Bank reported just 33 loans to HMDA in 2017 (29 were multifamily) and then 82 in 2018 (62 were multifamily loans in 2018), yet they reported higher volumes to ANHD and CRA regulators in 2017 because of their CEMA lending.
- Emigrant Bank makes loans under two entities, Emigrant Mortgage Company and Emigrant Funding Corporation. Emigrant Mortgage Company made over 100 loans in 2017 and 2018, but Emigrant Funding Corporation made fewer than 100 loans in 2017 (86) and over in 2018 (103), likely partly due to CEMA lending.

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[8] https://www5.fdic.gov/CRAPES/2016/57053_160208.PDF: (example on page 11 HMDA reportable vs. MECA)
[9] https://lsnyc.secure.nonprofitsoapbox.com/news-and-events/press-room/1033-jury-finds-emigrant-bank-liable-for-discrimination-in-first-reverse-redlining-case-to-be-tried-in-federal-court

As this demonstrates, **using a two-year look-back to determine the threshold could inadvertently exclude lenders that in fact make a high volume of loans that were not previously captured in HMDA but represent a significant portion of the mortgage market in our area.** And, regardless, the volume of multifamily lending is lower than 1-4 family lending, but that lending impacts many more people. Multifamily buildings in New York City range from 5 units up to over 1,000 units. The average number of units in each multifamily building is 32; 3,370 buildings have 100 or more units, and of those, 300 buildings have over 500 units. **Any lender that makes 25 multifamily loans likely represents a significant portion of any market, even in New York City, but more so in smaller cities.**

Raising the thresholds would also imperil HMDA's statutory purpose of accurately assessing whether housing and credit needs are being met. If, for example, the threshold is raised to 100 loans, the number of HMDA reported loans will fall by 20% or more in 2,200 low- and moderate-income tracts and in a similar number of rural tracts.

Members of the public, academics, and local agencies will not be able to accurately assess whether credit and housing needs are being met in the wake of this significant loss of data. **It's preposterous that we are being asked to analyze a change to the thresholds when we have little time to assess the impact of the new thresholds and reporting structures just implemented, nor can we evaluate lending over time if the thresholds keep changing. As mentioned above, the full dataset was barely released just 45 days before the comment period closes.**

The CFPB is also proposing to increase the threshold for reporting open end lines of credit often called Home Equity Lines of Credit (HELOCs). In the years before the financial crisis, HELOC lending was riddled with abuses that resulted in distress and/or foreclosure for large numbers of homeowners. Under the CFPB's proposal to permanently increase the threshold to 200 open end lines of credit, 401 lenders making 69,000 open end lines of credit would be exempt from reporting HMDA data. This is too many lenders and loans escaping the scrutiny of public review.

Congress passed HMDA in 1975. Lenders, including small volume lenders, have been reporting data for decades. Relief from reporting is thus only a minor gain for the lenders while it is a large loss for communities. Even smaller volume lenders can be significant lenders in smaller towns and rural areas. They need to be held accountable and their data is necessary for a complete and accurate picture of whether credit needs are being met. **If the CFPB makes thousands of lenders exempt from HMDA reporting, abusive and predatory lending will increase and remain undetected.**

Thank you for the opportunity to comment on this important matter. If you have any additional comments, or questions, please contact me at: jaime.w@anhd.org, 212-747-1117 x23.

Sincerely,

Jaime Weisberg
Senior Campaign Analyst
Association for Neighborhood and Housing Development